Office - Supreme Court, U.S.
FILED
JUN 10 1983
ALEXANDER L. STEVAS
CLERK

No. 82-1710

In the Supreme Court of the United States

OCTOBER TERM, 1982

FOX RIDGE ASSOCIATES & CO.,
APPELLANT,

v.

BOARD OF ASSESSORS OF
THE TOWN OF MARSHFIELD,
APPELLEE.

ON APPEAL FROM THE SUPREME JUDICIAL COURT
FOR THE COMMONWEALTH OF MASSACHUSETTS

SUPPLEMENT TO JURISDICTIONAL STATEMENT

WALTER L. SULLIVAN, JR.
8 Otis Place
P.O. Box 30
Scituate, Massachusetts 02066
(617) 545-4430
Attorney for the Appellant

Blanchard Press, Inc., Boston, Mass.—Law Printers (616) 426-6690

APPENDIX J

REPORT OF THE MBA
TAXATION SECTION
SPECIAL COMMITTEE ON
THE APPELLATE TAX BOARD

Evan Y. Semerjian, *Chairman*
Casimir deRham, Jr.
Edward D. Simsarian

April 22, 1983

1. *Scope of Assignment.*

The Committee was asked to consider the role, structure and operation of the Appellate Tax Board as a tribunal in tax cases, determine whether reorganization or replacement of the Board would be appropriate, and make recommendations through the Council of the Taxation Section to the Board of Delegates.

2. *Nature of Investigation.*

Members of the Committee had extensive and direct experience in Appellate Tax Board cases, and were familiar with the practice and procedure before the Board. The Committee in its preparatory work examined previous and currently pending proposals for changing the structure of the Board or creating a tax court. The Committee also sought and considered the views and comments of practitioners in tax cases, present and former members of the Board, state and local officials, and others. In addition, the Committee examined recent annual reports of the Board, and considered the structure and operation of the United States Tax Court and tax appeal systems in other states.

3. *Structure of Appellate Tax Board.*

Chapter 58A of the General Laws creates and sets forth the organization of the Board. The Board is included in the Department of Revenue, but is not subject to its control. The

Board consists of five members, including a chairman, all of whom are appointed by the Governor to staggered six-year terms. Not more than three Board members may be members of the same political party.

As a practical matter, it is not clear to what extent Board membership is considered a full-time job. Section 1 of chapter 58A provides that "[n]o member of the board shall, while he remains a member, act as attorney, counsellor or accountant in any contested matter of taxation before the Department of Revenue, before any Board of Assessors or before the courts of the Commonwealth; but the foregoing shall not be construed to prevent a member of the board from acting outside of office hours of the board as attorney, counsellor or accountant in any tax matters other than those dealing with taxes levied by the Commonwealth or by a subdivision thereof."

The Board has a clerk and several assistant clerks and other employees. The employees include a counsel and several assistant counsel, at least two of whom have been with the Board longer than most of the Board members. The Board members are now subject to the Managerial Pay Act, and receive annual salaries of between $32,000 and $42,000. There is no requirement that Board members have any particular experience or training. At the present time, three of the members are lawyers with varying levels of experience, and two of the members are non-lawyers who were formerly local assessors.

4. *Jurisdiction of Appellate Tax Board.*

The Board sits as a quasi-judicial agency in the executive branch to hear and decide taxpayers' appeals from assessors' refusals to abate local taxes on real estate and personal property. The Board also hears cases involving disputes between taxpayers and the Department of Revenue on state tax matters, and between local assessors and the Department of Revenue on equalized value matters. The Board's decisions are appealable directly to the Supreme Judicial Court.

Under section 64 of chapter 59 (except with respect to a tax on property in Revere or Winthrop) instead of appealing to the Appellate Tax Board, a taxpayer may alternatively appeal to the county commissioners, or to a "board authorized to hear and determine such complaints, for the county where the property taxed lies." However, the assessors may have the appeal transferred to the Appellate Tax Board.

5. *Operation of Appellate Tax Board.*

Approximately ninety-nine percent of the Board's case load consists of appeals by property owners seeking abatements of local property taxes. These local cases and the state tax cases are typically tried to a single member of the Board, who then takes them under advisement, and recommends a result to the full Board. The decision is then issued by the full Board, usually without any findings of fact or opinion. After the decision is issued, if a party desires a statement of reasons, he must formally request findings of fact and a report.

However, in the so-caled "informal" procedure in local property tax cases, there is no right to obtain findings of fact and report, and certain rights to appeal are waived. This informal procedure is designed for relatively small abatement disputes and intended to "eliminate formal rules of pleading, practice and evidence." G.L. c. 58A, §7A

Although the Board is in many ways like a trial court, the Massachusetts Rules of Civil Procedure are not applicable. Rule 37 of the Board provides that "the practice and procedure before the Board shall conform to that prevailing in equity causes in the courts of the Commonwealth; but the Board reserves the right to make hearings and proceedings as informal as possible, to the end that substance and not form shall govern, and that a final determination of all matters before it may be promptly reached."

6. *Problem Areas.*

The Committee is of the view that important aspects of the structure and operation of the Appellate Tax Board present

problems and shortcomings which should be addressed. It should be noted that the Committee does not place blame or find fault with any of the individual members of the Board, current or past. The problems are institutional.

a. *Training and Qualifications of Members.* The present system contains no requirements for training, experience or qualifications of Board members. The only statutory limittions relate to political affiliation. Since the tribunal in question is in effect a trial court, involving the presentation of evidence by experienced lawyers in often complex valuation or other types of tax cases, there is concern that the members should be lawyers with experience in taxation, property valuation and litigation.

b. *Procedure and Evidence.* Because of a number of interrelated factors, including disparate levels of trial experience of Board members and the lack of integrated standards for the admission of evidence of value, concern has been expressed that the Board has been sometimes inconsistent and unpredictable in its rulings on procedure and evidence.

c. *Independence of Tribunal.* Because the Board is in many respects like a trial court, there is concern that its posture in the executive branch deprives it of the independence essential for a true court. Prevailing suspicions as to its lack of independence, whether well-founded or not, can undermine the confidence of the public in the fairness, integrity and effectiveness of our tax system. The shortness of the term of appointment and the requirement regarding political affiliation are also concerns.

d. *Excessive Delays in Decisions and Reports.* In contested cases involving some complexity, such as commercial office building valuations, industrial valuations, utility property valuations, and many state taxation issues, the Board has often taken many months and sometimes nearly a year to issue decisions after trial. These decisions typically are not accompanied by findings of fact and opinions, and the Board after

being requested to do so by the parties then takes many more months to write opinions giving reasons for its decisions.

e. *Delegation of Decision-Making.* It appears that over the many years of the Board's existence, it has become customary for Board members who hear cases not to participate actively in the preparation and writing of the ultimate findings of fact and report, but instead to turn over to the legal staff the task of writing a report which rationalizes a decision previously made by the Board. The Board issued 28 written opinions in FY 1980, 53 in FY 1981, and 51 in FY 1982.

There is concern that tax cases require prompt resolution, and that the system should expect the decisionmaker to participate in the writing of findings and reasons for his own decision as part of a continuous judicial process with a minimum of delegation and delay.

f. *Excessive Filing Fees.* The present system ties some filing fees in local assessment cases to the assessed values of the properties involved. The maximum filing fee is $5,000. There is concern that such a system is unfair and inappropriate, and that there should be uniform and reasonable filing fees similar to those prevailing in our courts. On the other hand, retention of the present filing fee system would permit the tribunal to be self-sustaining to a large degree.

g. *Lack of Enforcement Power.* The Board is unable to enforce its own decisions. If an abatement order is issued by the Board and a municipality refused to pay, it is necessary to bring a collection action in the Superior Court.

h. *Lack of Published Reports.* Contrary to the intent of G.L. c. 58A, §3 (publication of opinions and reports), the Board does not publish its opinions and reports on a current basis. There is widespread belief that such publication would be desirable for such an important tribunal.

7. *Conclusions and Recommendations.*

a. To ensure consistency of results and development of judicial expertise, there should be a single tribunal with exclusive jurisdiction to hear and decide tax cases.

b. The tribunal should be a Massachusetts Tax Court, in the judicial branch, consisting of not more than three full-time judges, during good behavior, subject to the Code of Judicial Conduct.

c. The Tax Court should have a small-claims procedure, like that of the United States Tax Court or the New Jersey Tax Court, to hear and decide cases below a certain amount at issue, or limited to certain types of residential property, using informal procedures and informal rules of evidence for such cases only. The Court should have the power to appoint if necessary, nor more than two full-time commissioners with appropriate qualifications, for limited terms, to hear such small cases.

d. The present Appellate Tax Board should be replaced in total by the Tax Court. There should not be bifurcated jurisdiction in two separate tribunals as is presently proposed in S. 1057 and H. 3378.

e. Decisions of the Tax Court should be appealable directly to the Supreme Judicial Court, as is presently the procedure with the Appellate Tax Board, subject to referrals by the Supreme Judicial Court to the Appeals Court.

f. Judges of the Tax Court should be members of the bar, with experience in taxation, litigation and property valuation. Political affiliation should not be a required qualification.

g. Filing fees should not be unreasonably high or in an amount which would deter a taxpayer from having his day in court.

h. Internal procedures in the Tax Court should be established to ensure prompt decisions in litigated cases. The present hiatus between decisions and reports should be eliminated. Findings and opinions should be issued together with decisions, except in small claims cases, where a separate procedure for findings and opinions may be appropriate.

i. General Laws, chapters 58, 58A, 59 and 60, regarding procedures in tax cases, and any related statutes, should be revised and simplified.